

1973 WL 26751 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 24, 1973

\*1 Mr. S. N. Pearman  
Chief Highway Commissioner  
South Carolina State Highway Department  
Post Office Drnwer 191  
Columbia, South Carolina 29202

Dear Mr. Pearman:

Attorney General McLeod has referred to me year letter of May 21, 1973, in regard to the alleged private use of State Highway Department right of way. You have requested that this office take appropriate legal action to have the alleged obstructions removed.

I believe that it would be more appropriate at this point for the Department in writing to request courteously that South of the Border and Mr. Schafer remove the alleged obstructions. Resort to litigation should not be had, in my opinion, until an opportunity to comply voluntarily with a written demand that the encroachments be removed has been given by the Department. This procedure has been followed in other cases [See, e.g. [Ankrim v. SCSHD and Purdy v. SCSHD](#), 251 S.C. 42, 159 S.E.2d 911] and is the more reasonable one. In the event the obstructions are not then removed or some other arrangement made (such as was done in the [Ankrim](#) and [Purdy](#) cases where, after those cases were decided by the Supreme Court, the Department conveyed the alleged excess right of way to the adjoining landowners), an appropriate action can be brought for their removal.

With kindest personal regards.

Sincerely,

C. Tolbert Goolsby, Jr.  
Deputy Attorney General

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